HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 592 of 2007

Between:

VST Industries Limited,
Hyderabad,
Rep. By its Corporate General Counsel
Mr. Sanjay Khanna

... Appellant

And

The Presiding Officer,
Labour Court – I,
Hyderabad & others

... Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri C.R. Sridharan

July 30, 2007

Per G.S. Singhvi, CJ

This is an appeal by the management of VST Industries Limited for setting aside order dated 02.07.2007 passed by the learned Single Judge in W.P.M.P.No.16324 of 2007 in Writ Petition No.13067 of 2007, whereby he stayed award dated 20.01.2007 passed by Presiding Officer, Labour Court-I, Hyderabad (respondent No.1 herein) in I.D.No.116 of 2003 subject to the payment of wages to respondent No.2 – workman in accordance with Section 17-B of the Industrial Disputes Act, 1947 (for short, 'the Act').

A perusal of the record shows that on an application filed by

respondent No.2 under Section 2-A(2) of the Act with the complaint that the employer (the appellant herein) had arbitrarily accepted his resignation and dispensed with the service, respondent No.1 issued notice to the appellant, heard the representatives of the parties and then passed award dated 20.01.2007 for reinstatement of respondent No.2 with continuity of service and other attendant benefits including back wages.

The appellant questioned the award in Writ Petition No.13067 of 2007 on various grounds including the one that respondent No.2 does not fall within the definition of 'workman' under Section 2(s) of the Act. Another plea taken by the appellant is that the application filed by respondent No.2 under Section 2-A(2) of the Act was not maintainable and respondent No.1 committed a jurisdictional error by ordering his reinstatement with continuity of service and back wages.

The learned Single Judge admitted the writ petition and passed interim order, the relevant portions of which are reproduced below:

> " After hearing both the parties, prima facie I am of opinion that the petitioner-Management has not accepted the resignation before the legal notice sent by the respondent workman was received. The Labour Court has given a finding that the resignation was obtained by coercion.
>
> Under these circumstances, there shall be interim stay of all further proceedings in pursuance of the impugned award, subject to payment of wages as per Section 17-B of the Industrial Disputes Act, 1947 regularly to the respondent-workmen, by the management. Notice."

Shri C.R. Sridharan, learned counsel for the appellant argued that Section 17-B of the Act is not mandatory in character and the learned Single Judge committed a serious error by directing the appellant to pay wages to respondent No.2 ignoring the fact that the application filed by him under Section 2-A(2) of the Act was not

maintainable and that he is not a workman within the meaning of Section 2(s). Learned counsel submitted that payment of back wages to respondent No.2 would put unnecessary financial burden on the appellant and, therefore, the order under challenge may be set aside.

We have considered the submission of the learned counsel, but have not felt impressed. Since the writ petition filed by the appellant is yet to be adjudicated, we do not consider it necessary to express any opinion on the merits of the award passed by respondent No.1. Suffice it to say that while ordering reinstatement of respondent No.2, the learned Presiding Officer has minutely examined the factual matrix as well as legal position and recorded a finding that the management of the appellant had arbitrarily accepted his resignation and dispensed with his service.

Section 17-B of the Act reads as under:

> " **17-B. Payment of full wages to workman pending proceedings in higher courts:-** Where in any case a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings, in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:
>
> Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

In **Dena Bank v. Kiritikumar T. Patel**[1], the Supreme Court

took cognizance of the objectives and reasons for enacting Section 17-B and observed:

> " It would thus appear that the object underlying the enacting of the provisions contained in Section 17-B is to give relief to the workman in whose favour an award of reinstatement has been passed by the Labour Court and the said award is under challenge in the High Court or this Court. The said relief has been given with a view to relieve the hardship that would be caused to a workman on account of delay in implementation of the award as a result of the pendency of the proceedings in the High Court or this Court."

In **Ch. Saraiah v. Executive Engineer, Panchayat Raj Department**[2], the Supreme Court reversed the order passed by the Division Bench of the High Court which had set side the direction of the learned Single Judge for compliance of Section 17-B and observed as under:

> "Having examined the provisions of Section 17-B of the Industrial Disputes Act, we are of the considered view that the court has no jurisdiction to direct non-compliance with the same when the condition precedent fro passing an order in terms of Section 17-B of the Act is satisfied, and this being the legislative mandate, the Division Bench of the High Court committed serious error in interfering with the direction of the learned Single Judge."

In view of the above-stated legal position, we do not find any valid ground or justification to interfere with the discretion exercised by the learned Single Judge to stay the award subject to payment of wages to respondent No.2 in terms of Section 17-B of the Act.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, W.A.M.P.No.1185 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 30, 2007
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[1] (1999) 2 SCC 106
[2] (1999) 9 SCC 229